

2011 Finance Law Changes

Heather Fennell • Trina Griffin

NCGA Research Division

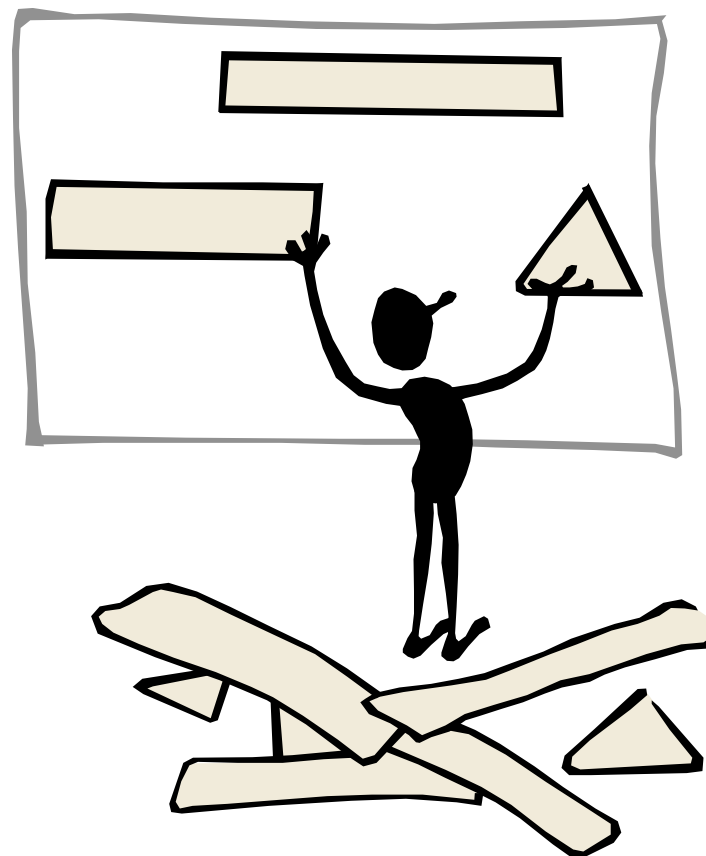


Revenue Laws Study Committee

October 5, 2011

Selected Legislation

- ∞ Income Tax Changes
- ∞ Incentive Changes
- ∞ Clarifying Changes and Miscellaneous Issues
- ∞ Local Issues Driving Statewide Changes
- ∞ Communications Changes



Income Tax Changes



Personal and Corporate

IRC Update

☞ One of the First Bills Enacted

- March 17, 2011
- S.L. 2011-5

☞ Highlights

- Extended various tax deductions that expired in 2010
- Extended modified version of section 179 expensing
- Decoupled from bonus depreciation
- Adopted federal estate exclusion amount

Appropriations Act of 2011

\$50,000 Business Deduction

- ✎ Individual income tax deduction for business income
- ✎ No limit on the size of business
- ✎ Applicable to non-passive income
- ✎ Schedules C, E, and F
- ✎ No sunset

Move to AGI

- ✎ Different starting point for calculating NC taxable income
- ✎ No change in tax liability
- ✎ No adjustment needed for personal exemptions and standard deduction amounts
- ✎ Greatly simplifies tax calculation, especially for non-itemizers

Forced Combinations

∞ Forced Combination - 2006

- *Walmart* Challenged
- Legislative Study

∞ DOR Enforcement – 2009

- Compliance Initiative
- Fair Tax Penalties

∞ Legislation – 2011

- Lack Economic Substance
- Not Fair Market Value
- RLSC determine fiscal impact



Tax Credit for Children with Disabilities

- ⌘ **New Credit** - \$6,000 for tuition and special education and related services expenses for a taxpayer's eligible dependent child with a disability.
- ⌘ Must be enrolled for preceding 2 semesters in public school.
- ⌘ Nonrefundable; 3-year carry forward.
- ⌘ Expected to increase GF availability in future years.
- ⌘ Nonreverting **Fund** established for special education services & to reimburse schools for conducting reevaluations and developing IEPs.



Incentive Changes



Economic Development

Economic Development Incentives



Expansion of 1%/\$80 Excise Tax

Port Facility

- ⌘ Specialized equipment used at a ports facility to unload or process bulk cargo to make it suitable for delivery for delivery to and for use by manufacturing facilities.
- ⌘ Effective 7/1/2013
- ⌘ No known projects.

Large Distribution Facility

- ⌘ Equipment for assembling and distributing products.
- ⌘ \$80 M investment + 550 employees within 5 years.
- ⌘ Clawback; Eff. 7/1/2013; sunset 7/1/2018.
- ⌘ Sales tax refund for purchases between July 1, 2012 and July 1, 2013.

Port Enhancement Zones

- ✧ Port of Morehead City in Carteret County (tier 3)
- ✧ Port of Wilmington in New Hanover (tier 3)
- ✧ Article 3J credits:
 - **Jobs tax credit** – must create 5 new jobs (same threshold as for tier 1 county); credit amt. is increased by \$1,000, or \$2,000 if job is filled by a resident of the zone (\$750/job for tier 3 county).
 - **M&E investment tax credit** – no investment threshold (same as for tier 1) and credit amt. = 7% of cost of TPP placed in service (same as for tier 1).
- ✧ Eff. 1/1/2013.

Retain Art. 3A Installment

- ✎ Under Bill Lee Act, there was a credit for substantial investment - \$10M investment in RP + 200 new jobs.
- ✎ Amount of credit = 30% of investment amt. taken in installments over 7-year period.
- ✎ Credit expires if number of employees falls below 200.
- ✎ This act creates exception by allowing taxpayer to continue taking credit even if number of employees falls below 200 as long as taxpayer has invested certain amt. in property and employment level has not fallen below 125.

Pass-Through Entity Payments

- ✧ Allows owner of a pass-through entity that claims an Art. 3J credit to treat some or all as a tax payment made by or on behalf of the taxpayer.
- ✧ By treating credit as a payment, nonresident members of a pass-through entity will not have their credit for taxes paid to another state reduced on their home state's return.
- ✧ Eff. 1/1/2011.

Clarifying Changes



And Other Miscellaneous Issues

Refunds of Tax Overpayments

- ✧ Change in DOR longstanding policy
 - Old policy = Overpayments discovered when return flagged by computer system.
 - New policy = Overpayments discovered when flagged return is manually reviewed and verified by employee.
- ✧ RLSC concluded no legislation needed, but DOR believed it could not release refunds without change in law.
- ✧ S.L. 2011-4 is consistent with prior, longstanding policy.



Once enacted, remaining 7,000 refunds were issued with 5% interest.

Business Entity Changes

- ❧ S.L. 2011-9: Ownership requirement for PUV is met if business entity that currently owns land shares one or more members with the business entity that previously owned farmland.



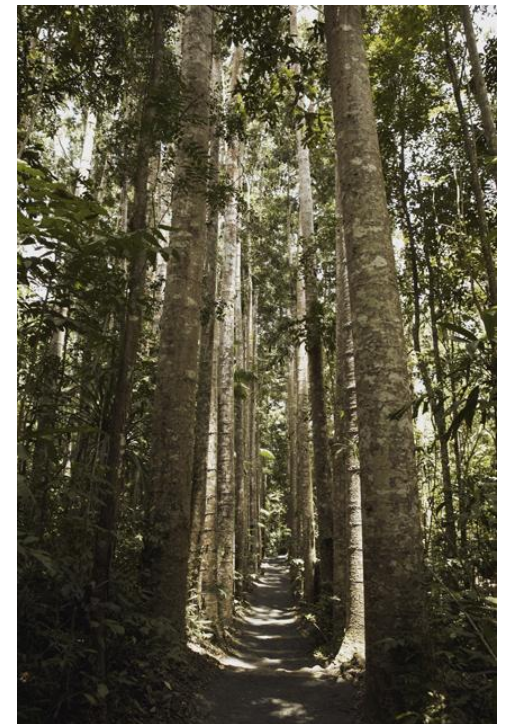
Technical, Clarifying, Admin. Changes

- ⌘ **Amenities** – Changed effective date for exclusion from admissions tax from August 1, 2010, to February 1, 2009.
- ⌘ **Cigarette Tax** – Modified payment statute to accommodate operating procedural changes of certain cigarette mfrs. and affiliates.
- ⌘ **Motorsports** – Allowed a related entity that pays tax on behalf of a motorsports racing team for aviation fuel and tangible personal property that is part of racing vehicle to claim refund.
- ⌘ **Accommodations** – Accommodations arranged or provided by school, camp, or similar entity to a person who pays to attend is not subject to sales tax.
- ⌘ **Datacenters** – Clarified 2010 legislation that reduced the investment threshold for purposes of qualifying for the reduced 1% excise tax rate on M&E to apply to datacenters that were already under construction.

Property Tax Uniformity for Conservation Land

Amends property tax treatment of land used for conservation purposes.

- ✎ Defines terms.
- ✎ Changes qualifications.
- ✎ Changes from exclusion to deferral.



Property Tax Uniformity for Conservation Land

Exclusion  Deferral

5 previous years of property tax payable if disqualifying event occurs:

- ∞ Land is no longer used for conservation purpose.
- ∞ Land produces income.
- ∞ Land transferred without easement requiring use for conservation purpose.

ESC Changes

Federal loan balance = \$2.53 billion.

FUTA = 6.2% — Federal Tax Credit = 5.4%

Effective FUTA Rate = 0.8%

0.3% yearly reduction in credit for each year
Federal loan is outstanding.

Local Issues



Driving Statewide Changes

Tax on Improved Property



- ∞ Local Problem: Winston-Salem Beltway Project
- ∞ State Issue: Transportation Corridors Restrict use of Property
- ∞ Legislation: Reduce Taxable Value of Property
- ∞ Local Concern: Local Revenue Loss for State Issue
- ∞ Sunsets in 10 Years

Municipal Service Districts/Streets

- ✧ Local Problem:
Neighborhood Streets in
Morrisville
 - Cannot Spend Tax Dollars to
convert Private Streets to
Public Streets
 - Cannot Enact Local
Legislation
- ✧ Statewide Solution: Expand
Purposes for Special Tax
Districts to Include
Conversion of Streets
- ✧ Legislation: Statewide
Application with Many
Restrictions



Durham, Morrisville, Raleigh

Modify Property Tax Base Exclusions



- ❧ Local Problem: ConAgra Plant Donated to the Town of Garner
- ❧ Statewide Solution: Property Tax Exclusion
 - Contiguous tract of commercial property
 - Significantly damaged by fire or explosion
 - Donated to a nonprofit corporation
- ❧ Legislation: Sunset

Sales Tax Over-Collection

∞ Local Problem:

- Taxpayer Collected and Remitted Sales Tax
- DOR found taxpayer owed use tax

∞ Prospective Solution:

- Allow a seller to apply over-collected sales tax to offset a use tax liability on a related transaction

∞ Business Court found in favor of taxpayer on January 4, 2010



Communications Changes



Level Playing Field and Prepaid Wireless

Level Playing Field/ Local Gov't Competition

BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, (2005):



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Cities offering communications service must meet certain requirements.

Level Playing Field/ Local Gov't Competition

Before service can be offered:

- ⌘ Public-private partnerships.
- ⌘ Public hearings.
- ⌘ Public referendum and additional review by LGC for debt incurred for system.

Once service is offered:

- ⌘ Payments in lieu of taxes.
- ⌘ Separate enterprise funds, annual audits.
- ⌘ Limit service to city limits.
- ⌘ Nondiscriminatory access to other service providers.
- ⌘ Price service above cost.

Level Playing Field/ Local Gov't Competition

Communications service is:

- ✧ Cable, video programming, telecommunications, broadband, or high-speed internet.
- ✧ To the public.
- ✧ For a fee.

Communications service is NOT:

- ✧ Intergovernmental data sharing.
- ✧ Data gathering (parking meters, utility smart meters).
- ✧ Service to the public for free.

Level Playing Field/ Local Gov't Competition

Partial exemption - “Unserved areas”

- ✎ Petition to Utilities Commission.
- ✎ 50% of census block that does not have access to high-speed internet.

Complete exemption – providers as of January 1, 2011.

- ✎ Limit service as provided in the Act.

Prepaid Wireless/ Point of Sale Collection

2007 – Uniform statewide collection of 911 fee. Prepaid wireless collected though either:

- ∞ Average rate per user.
- ∞ Decrement of active account.



Moratorium on collection of 911 fee on prepaid wireless through calendar year 2011.

Prepaid Wireless/ Point of Sale Collection

Collection of fee at retail sale:

- ☞ Fee on each retail sale is same as monthly fee on postpaid service: 70¢ (or lower amount set by 911 Board).
- ☞ Retailers retain 5% of fee (entire fee for first 3 months).
- ☞ Department of Revenue retains cost of collection, \$500,000 a year (\$700,000 first year).

Revenue Laws Study Committee

∞ First Wednesday of the Month @ 9:30 in
Room 544

- October 5, 2011 – Focus on Property Tax
- November 2, 2011
- December 7, 2011
- January 4, 2012
- February 1, 2012
- March 7, 2012
- April 4, 2012
- May 2, 2012

Revenue Laws website: <http://www.ncleg.net/>

Questions?



We'll try and answer them 😊